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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,201	03/28/2001	Paul F. Connelly JR.	PFC 00422	2925

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JAMES RAY & ASSOCIATES
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EXAMINER

WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,201

Applicant(s)

CONNELLY, PAUL F.

Examiner

Gloria R. Weeks

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 21, 2005 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Deike (USPN 3,735,822).

With respect to claims 14-17, Deike discloses a driver, the driver comprising: a body portion (61) in the form of a pipe having an elongated cavity; an impact member (63) welded to the body portion (61) adjacent an upper end thereof and disposed substantially normal to the elongated cavity, the impact member (63) having an upper surface and a radially opposed lower surface engageable with an upper end of an elongated object (64); the elongated cavity having a blind end within the body portion formed by the radially opposed lower surface of the impact member (63) and; and a pair of elongated handle (70) extending substantially parallel to the elongated cavity and spaced apart laterally from the elongated cavity.

Claim Rejections - 35 USC §102/103

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 9 are rejected under 35 U.S.C. 102(b)/103(a) as being anticipated by and/or unpatentable over Bowers (USPN 5,097,912).

With respect to claims 1-3 and 9, Bowers discloses a driver, the driver comprising: a body portion (12) having an elongated cavity (46); an impact member (18, 22, 26) carried by the body portion (12) adjacent an upper end (14) thereof and disposed substantially normal to the elongated cavity (46), the impact member (18, 22, 26) being generally rectangular shaped, and having an upper surface and a radially opposed lower surface (18) engageable with an upper end (74) of an elongated object (68), the surface area of the impact member (18) is greater than the cross-section of the body portion (12); the elongated cavity (46) having a blind end within the body portion formed by the radially opposed lower surface of the impact member (18); and at least one elongated handle (32) attached the body portion (12), the handle (32) extending substantially parallel to the elongated cavity (46) and spaced apart laterally from the elongated cavity (46).

Bowers discloses an impact member (18) having a “substantially square” shape (column 2 lines –65). One could easily draw the conclusion that the device of Bowers teaches an impact

member having a length greater than a width thereof the impact member (18). However, should it be found that such an observation is inconclusive, it would have been obvious to one having ordinary skill in the art the time of the invention to modify the shape of the impact member to have a length greater than its width, since applicant has not disclosed that such a shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a square impact member having an equal length and width, as such a surface would likewise serve as an adequate surface for impact.

Claim Rejections - 35 USC §103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-8 and 10-12 are rejected under U.S.C. 103(a) as being unpatentable over Bowers (USPN 5,097,912 in view of Deike (USPN 3,735,822).

Regarding claims 4 and 5, Bowers discloses a driver having a body portion (12) in the form of a hollow, elongated member having a square cross-section. Bowers does not disclose the body portion (12) as a pipe¹. Deike teaches that it is known to utilize a driver, having a body portion (61) in the form of a pipe having an elongated cavity. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the body portion of Bowers to the pipe

¹ **pipe** (pīp)n. A hollow cylinder or tube

Art Unit: 3721

formation of Deike, since Deike states at column 1 lines 33-40 that such a configuration allows for accommodation of an attachment or post during an impact/ramming operation. Thus, such a configuration is deemed to be equivalent to the square cross-section body portion of Bowers.

With respect to claims 6-8, 10 and 11, Bowers discloses a driver having a pair of handles fastened to transverse portions (28), wherein the transverse portions are connected to a body portion (12) of the driver. Bowers does not disclose the driver having gussets welded to the driver. Deike teaches a driver, having a body portion (61) welded to an impact member (63), and a pair of handles (70) with a transverse portion (68) welded to the body portion via two gussets (69) welded to the body portion (61). While Deike does not teach the two gussets being welded to both the body portion (61) and the impact member (63), It would have been obvious to one having ordinary skill in the art to locate the two gussets at the intersection of the body portion and the impact member, since it is has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Furthermore, it appears the invention would work equally well if the two gussets are located on the body portion or at the intersection of both the impact member and the body portion, as suggested by Applicant (page 9, lines 19-20) and disclosed by Deike.

In reference to claim 12, Bowers discloses a driver having handles (32), but does not disclose the handles having hand grips. Deike teaches a driver having handles (70) with hand grips (71). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the handles of Bowers to include the hand grips of Deike, since Deike states at column 1 lines 18-31 that such a modification allows for the operator to comfortably grasp the handles of the driver.

Art Unit: 3721

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowers (USPN 5,097,912 in view of Deike (USPN 3,735,822) as applied to claim 4 above, and further in view of Amicangelo (USPN 6,364,031).

Bowers in view of Deike discloses a driver including a pipe (Bowers-61) but does not disclose the pipe (Bowers-61) having a slot. Amicangelo teaches a driver (10) having a pipe body (40) and an impact member (42, 44), with a slot (46) in the pipe (40) and remote from the impact member (42, 44). It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the driver of Bowers in view of Deike to include the slot of Amicangelo for the purpose of facilitating the removal of an elongated article that has been driven into the earth (Amicangelo-column 6, lines 33).

10. Claims 18-21 are rejected under 35 U.S.C. 103(a) as being obvious over Deike (USPN 3,735,822).

With respect to claims 18-21, Deike discloses a driver, having a body portion (61) welded to an impact member (63), and a pair of handles (70) with a transverse portion (68) welded to the body portion via two gussets (69) welded to the body portion (61). Deike does not disclose the two gussets being welded to both the body portion (61) and the impact member (63). It would have been obvious to one having ordinary skill in the art to locate the two gussets at the intersection of the body portion and the impact member, since it is has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Furthermore, it appears the invention would work equally well if the two gussets are located on the body portion or at the intersection of both the impact member and the body portion.

Art Unit: 3721

Response to Arguments

11. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Gloria R Weeks
Examiner
Art Unit 3721


grw
July 5, 2005


SCOTT A. SMITH
PRIMARY EXAMINER